

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: May 19, 2010
POSITION: Oppose

BILL NUMBER: SB 1391
AUTHOR: L. Yee

BILL SUMMARY: Tax Credits: Reporting Information and Recapture

This bill, for taxable years beginning on January 1, 2011, would require taxpayers claiming tax credits to provide employment and tax credit information and disallow certain credits if the taxpayer fails to meet specified employment requirements.

FISCAL SUMMARY

According to the Franchise Tax Board (FTB), the cost of administering this bill cannot be determined because it is unclear to what extent the department would be required to audit, capture, and report data to the Legislature.

The FTB notes that this bill does not have any revenue effect because it does not alter any provisions of current tax law. This bill would place constraints on potential future changes to tax law. The effects of this bill would be incorporated into the revenue estimates for future proposals to add tax expenditures; but cannot be estimated now because we do not know which tax credits will be added in the future.

COMMENTS

Although imposing performance measures on tax credits to assure their effectiveness in achieving public policy goals has merit, Finance opposes this bill for the following reasons:

- Imposing a bright-line employment test, as proposed in this bill, may not necessarily be good tax policy. For example, a future tax credit may be deemed necessary for achieving a short-term goal for which this bright-line test would not be appropriate.
- This bill does not provide sufficient detail to determine the extent of the FTB's workload in administering its provisions and therefore the cost to the department is indeterminate.

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| Analyst/Principal (0724) R. Lawrence | Date | Program Budget Manager Mark Hill | Date |
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| Department Deputy Director | Date |
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| Governor's Office: | By: | Date: | Position Approved _____ |
| | | | Position Disapproved _____ |

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| BILL ANALYSIS | Form DF-43 (Rev 03/95 Buff) |
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ANALYSIS**A. Programmatic Analysis**

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits).

This bill would

Require a taxpayer doing business in the state under the Personal Income Tax Law or Corporate Income Tax Law to submit to the FTB on a timely filed original return the following information:

- The number of full-time, part-time, and temporary employees employed by the taxpayer in the state in the current and preceding years.
- The number of full-time, part-time, and temporary jobs created by the tax credit.

Provide that for any tax credits added into law on or after January 1, 2011, the credit would be disallowed and any credits previously allowed would be recaptured and the taxpayer would be liable for any credits on previous tax returns if the taxpayer has a net decrease in the number of full-time employees according to the information submitted to the FTB.

The net decrease in qualified full-time employees would be determined on or after January 1, 2014, on an annual full-time equivalent basis by subtracting the total number of full-time equivalent employees employed in the current taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year from the average number of full-time equivalent employees employed in the three preceding taxable years by the taxpayer and by any trade or business acquired during the current taxable year.

This bill would define the following:

- An "annual full-time equivalent" in the case of a full-time employee paid hourly qualified wages, the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.
- An "annual full-time equivalent" in the case of a salaried full-time employee, the total number of weeks worked for the taxpayer by the employee divided by 52.
- "Business Credit" means a credit added on or after January 1, 2011, allowed to taxpayers engaged in or carrying on any trade, business, profession, vocation, or calling or commercial activity in the state.

B. Fiscal Analysis

According to the FTB, the cost of administering this bill cannot be determined because it is unclear to what extent the department would be required to audit, capture, and report data to the Legislature.

The FTB notes that this bill does not have any revenue effect because it does not alter any provisions of current tax law. This bill would place constraints on potential future changes to tax law. The effects of this bill would be incorporated into the revenue estimates for future proposals to add tax

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expenditures; but cannot be estimated now because we do not know which tax credits will be added in the future.

| Code/Department Agency or Revenue Type | SO | (Fiscal Impact by Fiscal Year) | | | | | | | |
|--|----|--------------------------------|-------|--------------------|-------|-----------|----|-----------|------|
| | LA | (Dollars in Thousands) | | | | | | | |
| | CO | PROP | | | | | | | Fund |
| | RV | 98 | FC | 2009-2010 | FC | 2010-2011 | FC | 2011-2012 | Code |
| 1104/Corp Tax | RV | No | ----- | See Fiscal Summary | ----- | | | | 0001 |
| 1147/Pers Inc Tax | RV | Yes | ----- | See Fiscal Summary | ----- | | | | 0001 |
| 1730/FTB | SO | No | ----- | See Fiscal Summary | ----- | | | | 0001 |